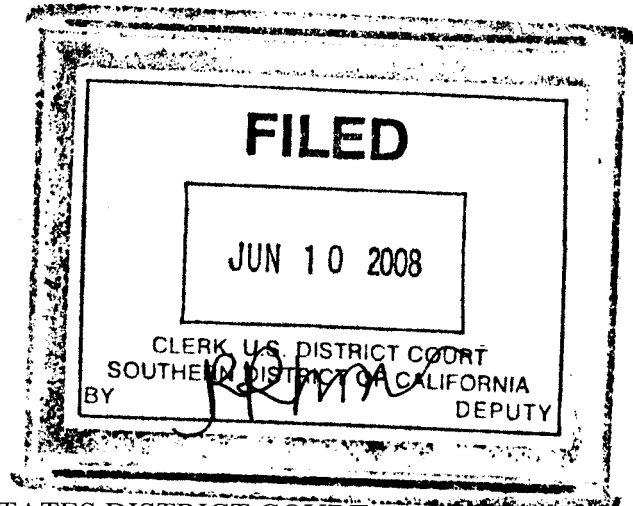


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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 MONICA PAYAN,

14 Defendant.

Magistrate Case No. 08MJ1630

15 **STIPULATION OF FACT AND JOINT  
MOTION FOR RELEASE OF  
MATERIAL WITNESS(ES) AND  
ORDER THEREON**

**(Pre-Indictment Fast-Track Program)**

16 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
17 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caroline  
18 P. Han, Assistant United States Attorney, and defendant Monica Yvette Payan, by and through and  
19 with the advice and consent of defense counsel, Gregory Obenauer, that:

20 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing  
21 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
22 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
23 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
24 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.  
25 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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27 //

28 CPH:6/9/08

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before **June 26, 2008**.

6           4. The material witness, Jovita Rodriguez-Lapa, in this case:

7               a. Is an alien with no lawful right to enter or remain in the United States;

8               b. Entered or attempted to enter the United States illegally on or about May 23,  
9 2008;

10              c. Was found in a vehicle driven by the defendant, Monica Payan, at the San  
11 Ysidro, California Port of Entry (POE) and that defendant knew or acted in reckless disregard of the  
12 fact that they were aliens with no lawful right to enter or remain in the United States;

13              d. Was paying an unknown amount of money to others to be brought into the  
14 United States illegally and/or transported illegally to their destination therein; and,

15              e. May be released and remanded immediately to the Department of Homeland  
16 Security for return to their country of origin.

17           5. After the material witnesses are ordered released by the Court pursuant to this  
18 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
19 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any proceeding,  
20 including, but not limited to, motion hearings, trial, sentencing, appeal or collateral attack, that:

21               a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
22 substantive evidence;

23               b. The United States may elicit hearsay testimony from arresting agents  
24 regarding any statements made by the material witness(es) provided in discovery, and such testimony  
25 shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements against interest  
26 of (an) unavailable witness(es); and,

27               c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),

1 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted  
 2 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant  
 3 waives the right to confront and cross-examine the material witness(es) in this case.

4 6. By signing this stipulation and joint motion, defendant certifies that defendant has  
 5 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
 6 further that defendant has discussed the terms of this stipulation and joint motion with defense  
 7 counsel and fully understands its meaning and effect.

8 Based on the foregoing, the parties jointly move the stipulation into evidence and for the  
 9 immediate release and remand of the above-named material witness(es) to the Department of  
 10 Homeland Security for return to their country of origin.

11 It is STIPULATED AND AGREED this date.

12 Respectfully submitted,

13 KAREN P. HEWITT  
 14 United States Attorney

15 Dated: 6/10/08.

16 *Caroline P. Han*  
 17 CAROLINE P. HAN  
 18 Assistant United States Attorney

17 Dated: 6/10/08.

18 *Gregory D. Obenauer*  
 19 GREGORY D. OBENAUER  
 20 Defense Counsel for Keith Dwight Freeman

20 Dated: 6/10/08.

21 *Monica Payan*  
 22 MONICA PAYAN  
 23 Defendant

**ORDER**

Upon joint application and motion of the parties, and for good cause shown,

**THE STIPULATION** is admitted into evidence, and,

**IT IS ORDERED** that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

**SO ORDERED.**

Dated: 6/10/08.

  
United States Magistrate Judge